IDENTIFYING SIGNIFICANT ENVIRONMENTAL ISSUES PROTOCOL

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INTRODUCTION

"Identifying significant environmental issues" is supposed to be one of the principal objectives of NEPA scoping, but no formal guidance exists for accomplishing this vital task. Consequently, some NEPA practitioners compensate by including everything anyone brings up, including issues that are not really significant, or those that more properly are political, logistical, or purely social or economic, while others narrow the range of issues too much.

It is important to realize that at the initial issue-identification stage, it's OK to include non-environmental issues as long as they are *clearly labeled* as such, and as long as all parties (especially in the public) understand the different categories of issues being included. Why? Because the subsequent environmental analysis will necessarily revolve around *environmental* issues, and it is important not to mislead any of the parties at this early stage of exploration and analysis.

It is also important to realize that those *non-environmental* issues that are highly valued by various parts of the public, or by other agencies, provide a vital part of the context or decision space for the project. Therefore, it is often useful to include some discussion of these important political, logistical, social or economic issues as background for the public and the decision-maker. But do not confuse them with *environmental* issues that will be covered by *environmental* analyses and resolved through *environmental* solutions.

"Identifying significant environmental issues" is best accomplished as a three-step process:

1.   Identify "issues" as distinguished from other types of input

2.   Identify "environmental issues" as distinguished from other types of issues

3.   Determine which environmental issues are "significant," and which are not

Each of these steps may have several sub-parts, and each should involve as many members of the Interdisciplinary Team as possible to ensure that everything important is included, and nothing trivial is included.

It is often helpful to think of these steps as constituting different size screens in a set of sieves or filters, as shown in Figures 1, 2 and 3, below.

Keep in mind that these guides are just that, guides. Issues may arise that, for various reasons, the Interdisciplinary Team or decision-maker may wish to retain or eliminate. The purpose of this protocol is to provide a systematic method for identifying the various kinds of issues, and making their selection more consistent across agencies and projects. Remember that decisions about which issues to retain and eliminate should be documented in the administrative record for future use during project review or litigation.

Step 1: Identify Issues

During scoping, agencies will receive many types of input from internal staff, the public and other agencies. This input comes in all kinds of forms, and is of varying degrees of relevance to the subsequent analysis and decision. Some of this input is simply suggestions or opinions; some represents real issues that will affect how the project is defined, analyzed, and accomplished. While the first category can help delimit the context and the nature of the decision space for the project, it is the second category that is crucial for analysis and the ultimate decision. The steps that follow may help distinguish *issues* from these other categories of input. Be aware that none of the boundaries are sharp, and that opinions, suggestions, and concerns about such topics as threatened or endangered species, cultural resources, Environmental Justice, etc. may reflect the need to identify these specific *environmental* issues for analysis in Step 3.

Figure 1. Sorting Input to Identify Potential Environmental Issues
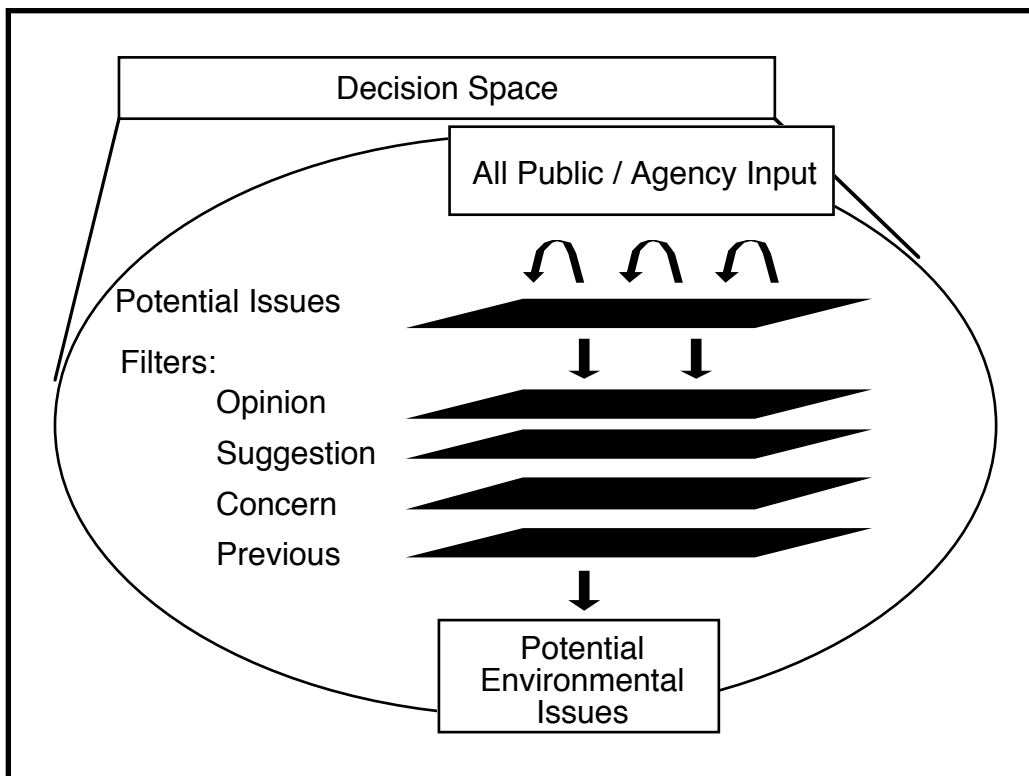
A.   Identify and Eliminate Opinions

Opinions come in many forms, most of which boil down to "I like…" or "I don't like…." While these may help to define the decision space, provide a preview of support or opposition, or point the way to underlying environmental issues that should be analyzed, by themselves they are only opinions and should not be carried forward as issues.

B.   Identify and Eliminate Suggestions

        Suggestions often take the form "You should…" or "You should not…." As with opinions, suggestions (especially if they come from staff, from agencies with jurisdiction by law or expertise, or from established advocacy groups) should be taken seriously and evaluated for their feasibility. Also, any "suggestions" for needed studies or project alternatives should be very carefully evaluated and this evaluation documented in the administrative record prior to the next step.

C.   Identify and Eliminate Concerns

        Concerns often take the form "I am worried about…" or express some opinion which may appear unrealistic or even silly to the Interdisciplinary Team. As with opinions and suggestions, concerns may represent larger environmental issues, or serious underlying problems with agency credibility, and thus may provide a preview of potential litigation topics.

D.   Identify and Eliminate Topics Already Covered

        If topics raised in internal, public or agency input have been covered adequately in previous NEPA analyses, they need not be revisited unless circumstances have changed enough to warrant a new look. For example, additions to threatened or endangered species lists will require enough analysis to determine whether the new species will be affected by the project, although threatened or endangered species as a whole may or may not become a *significant* environmental issue in Step 3, below.

Step 2: Identify Environmental Issues

The result of applying the four filters in Step 1 is a list of *potential environmental issues*, which will then be passed through the four filters shown in Figure 2. It is extremely important to recognize that some topics in Step 2, especially those related to socio-economics, may need to be analyzed in the NEPA document although, strictly speaking, they are not *environmental*. NEPA is, after all, about the *human environment*, which is defined broadly in 40 CFR 1508.14 "to include the natural and physical environment and the relationship of people with that environment." The section goes on to say, "When an Environmental Impact Statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the Environmental Impact Statement will discuss all of these effects on the human environment."

As with Step 1, topics that fall out because of the various Step 2 filters are still important to evaluate. It's just that a NEPA document, or an agency decision about a specific project, rarely can resolve a political, logistical, economic, or sociocultural issue per se. These types of issues help to define the context and decision space for the project, and may give clues to potential litigation, but are usually outside the control of the agency and often exceed the scope of the specific project being considered.

Figure 2. Sorting Input to Identify Environmental Issues
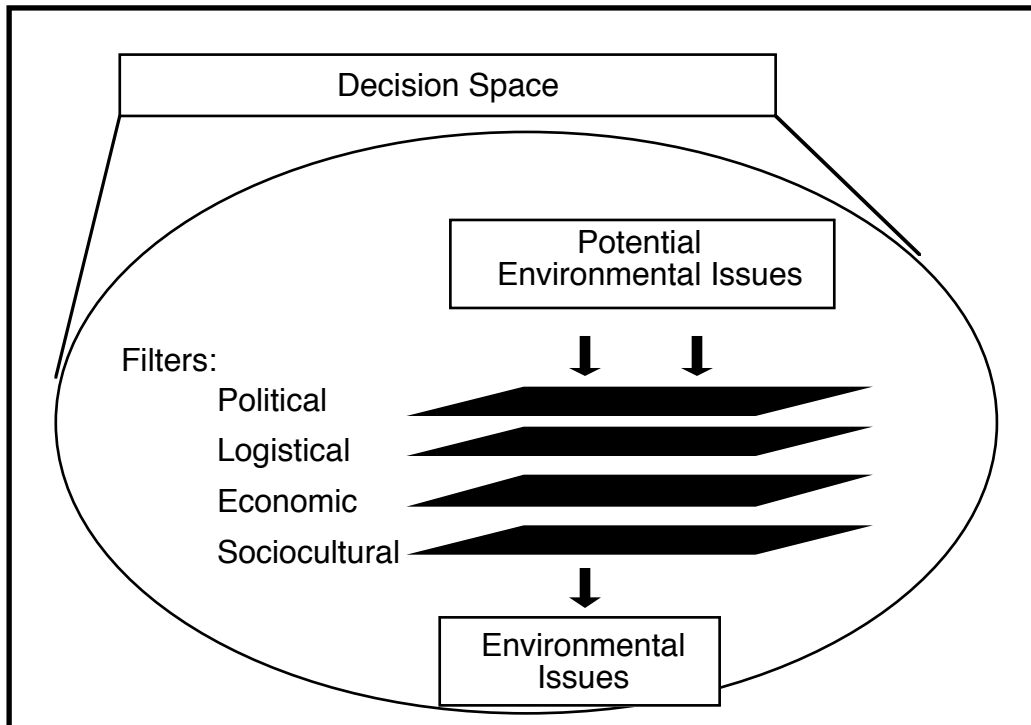
A.   Identify and Eliminate Political Issues

Political issues are often very seductive to the NEPA analyst. But questions of environmental or other principles, proper use of taxpayer dollars, nature of decision processes, etc., are not usually available for the agency to decide as part of its project planning process. Usually, the solution to these questions lies with some kind of legislative process, at the local, state, or national level. Sometimes, the solution lies at a higher level within the agency itself. In either case, agency staff should be careful to identify a political issue as such, and bring it to the attention of the proper authorities.

B.   Identify and Eliminate Logistical Issues

Logistical issues constitute those aspects of a project such as timing, technology, sometimes funding or source of funds, staffing, staging, and the like. Scoping input that raises logistical issues is really raising questions about alternative ways of conducting the project. Logistical issues should be carefully evaluated, and those that meet the purpose and need and are feasible from the technical and economic standpoint should be carried over into a list of potential alternatives for more detailed evaluation by the Interdisciplinary Team.

C.   Identify Economic Issues

Economic issues, like sociocultural issues (see 2D, below) are special because *by themselves* they will not trigger an Environmental Impact Statement. Therefore, it is important to understand that the purpose of this filter is to determine whether any economic issues exist, that may need to be analyzed along with any natural and physical environmental issues in the NEPA document. Many projects have no economic issues. For those that do, it is vital to obtain appropriate analytical expertise, which often must come from outside the agency. Hence, the importance of identifying such issues early during the scoping process, and determining their relationship to the natural and physical environmental issues more traditionally analyzed by the agency.

D.   Identify Sociocultural Issues

Sociocultural issues, like economic issues (see 2C, above) are special because *by themselves* they will not trigger an Environmental Impact Statement. Therefore, it is important to understand that the purpose of this filter is to determine whether any sociocultural issues exist, that may need to be analyzed along with any natural and physical environmental issues in the NEPA document. Many projects have no sociocultural issues. For those that do, it is vital to obtain appropriate analytical expertise, which often must come from outside the agency. Hence, the importance of identifying such issues early during the scoping process, and determining their relationship to the natural and physical environmental issues more traditionally analyzed by the agency.

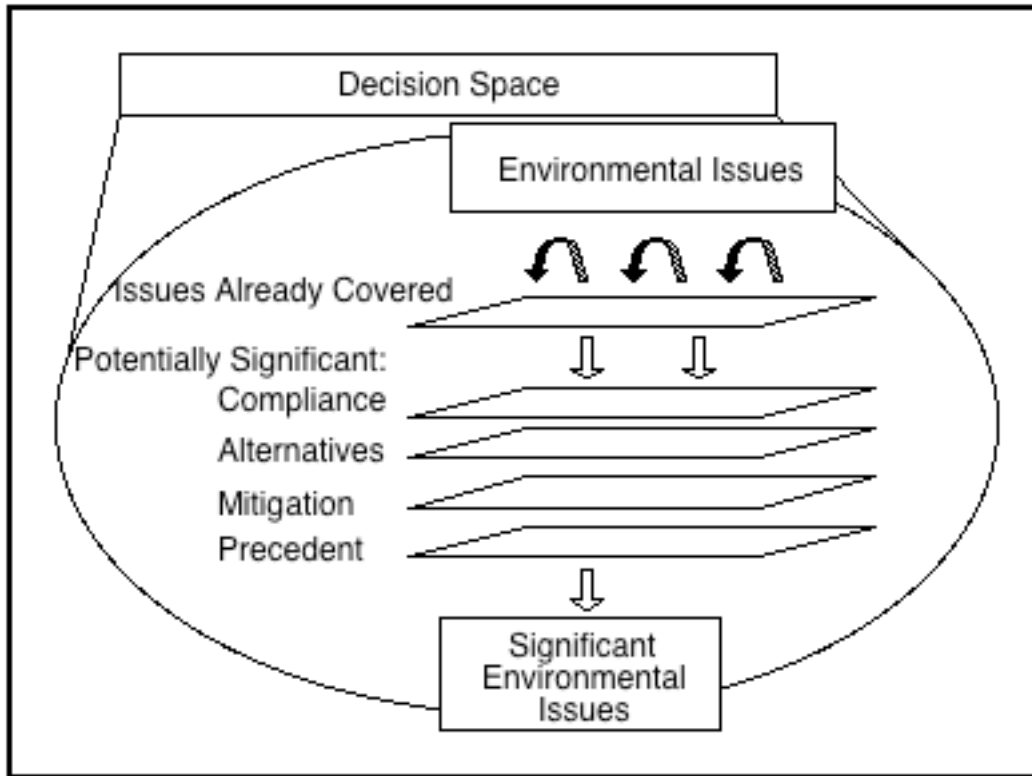### *Step 3: Identify Significant Environmental Issues*

The issues that pass all the filters in Step 2 are properly considered to be *environmental* in nature, and are the proper focus of a NEPA document. The final step in the process is intended to sort these remaining issues into two categories:

1.   Those which will be examined in detail and described in the NEPA document, and

2.   Those which will be studied enough to ensure nothing important is overlooked, but will not be examined in detail.

All but one of the filters in this Step operate to *keep issues in the mix for analysis*. Figure 3, below, illustrates the filters in Step 3.

As described above in Step 1D, issues that have already been covered in a NEPA analysis need not be revisited unless the situation has changed enough to warrant it. As issues become more clearly defined through the filters in Step 2, it is often useful to double-check and ensure that you are not keeping an issue in that should be eliminated, or eliminating one that should be kept in for analysis.

Figure 3. Filtering Environmental Issues to Identify Significant Environmental Issues

A.   Significant Environmental Issues Related to Compliance with Environmental Law

Environmental issues related to compliance with environmental laws and regulations should be considered significant until shown to be otherwise through field surveys, analyses, required consultations, permit conditions, or monitoring. For example, if surveys have demonstrated that no threatened or endangered species or cultural resources exist that will be impacted by the project, and the appropriate Section 7 and Section 106 consultations have been carried out and documented in the administrative record, threatened or endangered species and cultural resources have been shown to be "not significant" for the purposes of further NEPA analysis. Similarly, if threatened or endangered species may exist in the project area but no field surveys have yet been carried out, threatened or endangered species should be considered "significant" for the purposes of initial analysis, even though it may be downgraded later. If impacts on a given resource without mitigation are expected to be some regulatory threshold, that resource should be considered "significant" for the purposes of analysis.

Health and safety compliance may serve as a filter here, as well. Keeping in mind the broad definition of "human environment," make sure all required health and safety standards are being met with the proposed action and alternatives, and that any required permits, reports, audits, inspections, consultations, and similar tasks have been accomplished and documented in the administrative record.

B.   Significant Environmental Issues Related to Feasible Alternatives

        Environmental issues related to feasible alternatives should be considered significant. Such issues may determine which alternative (including the proposed action or No Action) is selected, and hence affect the final decision about the project. For example, if the proposed action would affect threatened or endangered species, while one or more alternatives will not, or would affect different species, threatened or endangered species should be considered a significant issue to carry forward into analysis.

C.   Significant Environmental Issues Related to Mitigation

        Environmental issues related to mitigation should be considered significant for analysis, even though mitigation ultimately can reduce the impact below a threshold level of significance. Mitigation also often results in different alternatives, which can affect the final decision. Therefore such issues should be treated as significant.

D.   Significant Environmental Issues Related to Precedents

        Environment issues related to precedents should be considered significant. If the proposed action or alternatives may affect a given resource, area, or issue for the first time, or if the nature of the effects may constitute the first such effects, the resource, area or issue should be considered significant. For example, timber harvest in roadless areas, transport of nuclear waste to a new repository, and construction of a new highway through an existing community could raise environmental issues related to Wilderness values, nuclear safety, and socioeconomics.

E.   Other Significant Environmental Issues

        Other environmental issues may be considered significant by the Interdisciplinary Team or the decision-maker, based on other criteria than those described here.

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Step 1. Identify Issues

A.   Identify and Eliminate Opinions

B.   Identify and Eliminate Suggestions

C.   Identify and Eliminate Concerns

D.   Identify and Eliminate Topics Already Covered

Step 2. Identify Environmental Issues

A.   Identify and Eliminate Political Issues

B.   Identify and Eliminate Logistical Issues

C.   Identify and Evaluate Economic Issues

D.   Identify and Evaluate Sociocultural Issues

Step 3. Identify Significant Environmental Issues

A.   Significant Environmental Issues Related to Compliance with Environmental Law

B.   Significant Environmental Issues Related to Feasible Alternatives

C.   Significant Environmental Issues Related to Mitigation

D.   Significant Environmental Issues Related to Precedents

E.   Other Significant Environmental issues